

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **2:18-cv-03720-FMO (SHK)**

Date: April 10, 2020

Title: ***Richard Tetsuo Osaki v. City of San Bernardino, et al.***

Present: The Honorable Shashi H. Kewalramani, United States Magistrate Judge

D. Castellanos

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings (IN CHAMBERS): ORDER TO SHOW CAUSE WHY PLAINTIFF HAS
FAILED TO OPPOSE CITY DEFENDANTS'
MOTION TO DISMISS**

On April 27, 2018, pro se Plaintiff Richard Tetsuo Osaki (“Plaintiff”) constructively filed a Civil Rights Complaint (“Complaint”) under 42 U.S.C § 1983. Electronic Case Filing Number (“ECF No.”) 1, Complaint. On September 30, 2019, Plaintiff, now represented by counsel, filed a First Amended Complaint (“FAC”) naming as Defendants the City of San Bernardino, G. Orozco, Ahmed, E. Luna, C. Smith, Saenz, G. Schuelke, K. Hernandez, and Koahou’s (collectively “City Defendants”), as well as K. Velasquez and K. Mudge. ECF No. 26, FAC. On November 18, 2019, City Defendants filed a Motion to Dismiss (“First MTD”) Plaintiff’s FAC with prejudice. ECF No. 43, First MTD.

On November 19, 2019, the Court issued a briefing schedule on City Defendants’ First MTD, wherein it warned Plaintiff that “**failure to oppose a motion to dismiss may be construed as consent to the granting of the motion, and may result in dismissal of the action pursuant to Local Rule 7-12.**” ECF No. 44, Minute Order (emphasis in original). On November 26, 2019, Plaintiff filed a Non-Opposition to City Defendants’ First MTD (“Non-Opposition”). ECF No. 46, Non-Opposition. The Court then dismissed Plaintiff’s FAC against City Defendants, without prejudice, and granted Plaintiff twenty-one days to file a Second Amended Complaint (“SAC”). ECF No. 47, Order Dismissing FAC.

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After Plaintiff filed a SAC, ECF No. 48, SAC, City Defendants again moved to dismiss all claims against them pursuant to Federal Rules of Civil Procedure 12(b)(6) and 8(a)(2) (“Second MTD”). ECF No. 49, Second MTD. On February 11, 2020, Plaintiff filed a Non-Opposition to City Defendants’ Second MTD (“Second Non-Opposition”) wherein Plaintiff did not substantively defend against City Defendants’ Second MTD and instead requested that if the Court grants the City Defendants’ Second MTD, the Court also grant Plaintiff leave to file a Third Amended Complaint (“TAC”). ECF No. 50, Second Non-Opposition. City Defendants filed a Response to Plaintiff’s Second Non-Opposition (“Response”) asserting that this is the second time Plaintiff has filed a Notice of Non-Opposition and has made no efforts to oppose City Defendants’ MTDs. ECF No. 51, Response. Thus, City Defendants argued, Plaintiff should not be granted further leave to amend his Complaint against them. Id.

The Magistrate Judge then issued a Report and Recommendation (“R&R”) recommending City Defendants’ Second MTD be granted and that Plaintiff’s claims against City Defendants be dismissed because Plaintiff, who is represented by counsel, had repeatedly chosen not to oppose City Defendants’ MTDs, despite being warned that failure to oppose could result in dismissal of the claims. ECF No. 53, R&R. Plaintiff then filed Objections to the R&R stating that Plaintiff’s counsel had been very busy preparing for two trials and had been unable to prepare a full opposition to the Second MTD and asking the Court to reconsider its recommendation to dismiss the claims against City Defendants’ on procedural grounds. ECF No. 55, Objections to R&R.

Although Plaintiff again failed to provide substantive opposition to City Defendants’ Second MTD or explain why extensions of time had not been sought, because of the public policy favoring resolution of a case on its merits Plaintiff will be provided a final chance to respond.

Accordingly, Plaintiff is ORDERED TO SHOW CAUSE why this action should not be dismissed for failure to file a substantive response to City Defendants’ MTD. The Court provides Plaintiff until **April 24, 2020**, to file a substantive opposition to the MTD [ECF No. 49] or face dismissal of this action as to City Defendants in accordance with the previously issued Report and Recommendation.

Plaintiff is warned that failure to timely follow this order will be deemed as Plaintiff’s consent to this action being dismissed for failure to prosecute and follow Court orders. Extensions to the deadline provided will only be granted for extremely good cause shown.

IT IS SO ORDERED.